KONINKLIJKE PAKETVAART-MAATSCHAPPIJ N.V. v. E. J. WUISAN & 29 ORS.

[O.C.J. (Rose C.J.) March 25, 1959]

[Singapore — Suit No. 913 of 1958]

Master and Servant — Seamen — Repatriation of seamen on shipping operation becoming impossible — Contract of service — Fundamental change in prospects and conditions of service — Refusal to accept transportation and repatriation to Indonesia — Consequent dismissal — Refusal of crew to leave ship — Claim for damages and arrears of wages — Lien on ship — Injunction — Fair Order.

Admiralty action — Discretion of Court.

In this case the plaintiffs until very recently operated a fleet of ships largely in Indonesian waters. The defendants were petty officers in their employ. As a result of political events in Indonesia, it became impossible for the plaintiffs to continue their operations so far as Indonesia was concerned, the Indonesian Government having set up an organisation entitled P.P.K.P.M. to operate and control the assets of the plaintiffs in Indonesia. This operation and control was effected without consultation with the plaintiffs. By the middle of June 1958 they decided to repatriate their Indonesian personnel, including the defendants. By clause 5 of the seaman's agreement, which they had entered into with all the defendants, three months' wages in lieu of notice was required in the event of termination of defendants' services on the ground that some of the plaintiffs' ships were being taken out of service. The plaintiffs issued notice of transfer to each of the defendants "to inform you that you will be transferred to P.P.K.P.M. at Djakarta" and the shifting was to be made by one of their ships which would leave Singapore on date stated. When the defendants inquired as to what steps were to be taken in regard to the sums due and about to become due to them, they were informed to the effect that any monies due to them would be paid in Djakarta by the P.P.K.P.M. The defendants were perturbed at what they regarded as a fundamental change in their prospects and conditions of service and consequently declined to accept transportation and repatriation until what they regarded as their just claims were met by the plaintiffs themselves. Having received no satisfactory attention in their claims, they elected to remain upon the ship on which they were then quartered. The plaintiffs regarded the refusal to accept transfer as an act of disobedience to a lawful order and consequently gave a notice of dismissal to each of the defendants. They alleged that the defendants have wrongfully remained on their vessel and intended to continue thus to remain; they therefore claimed an injunction to restrain the defendants from continuing to remain on their said vessel. They also claimed for damages, costs and other reliefs. The defendants *inter alia* counterclaimed wages and payments due to them under their contract of service and a declaration that they were entitled to a lien on the vessel for payment of their wages.

Held: (1) the defendants were justified in disobeying the order of transfer;

(2) there is no difference in principle between a seaman's contract and any other contract between a master and servant, except that in the case of a seaman there is a rule, whether imposed by statute or by common law or by custom, that he may not be discharged in a foreign port unless he is provided with maintenance and accorded suitable repatriation facilities;

(3) a seaman whose contract has been unlawfully determined is limited to recovery of damages in respect of that unlawful determination, with the addition of any arrears of wages to which he was already entitled at the time of the determination of his service;

(4) in this case several of the defendants are entitled to arrears of wages, and until these are paid the defendants in question are entitled to a lien on the vessel and to the appropriate declaration. The defendants' action in remaining in the ship after their termination of service amounted to a technical trespass, but in the circumstances of the case the plaintiffs' loss is largely nominal and can appropriately be met by an award of $5 damages against each of the remaining defendants;

(5) an injunction is unnecessary at this stage and should not be granted. The fair order is that the plaintiffs should have liberty to apply for an injunction restraining the defendants or any of them from remaining in the ship in question, or in any other of the plaintiffs' ships in Singapore, in the event of a refusal on the part of the defendants or any of them of a reasonable offer of repatriation to Indonesia under suitable conditions.

In matters of Admiralty a very wide discretion is vested in the Court to make such orders as would seem to be just in the light of the particular facts.

Case referred to:—

(1) *Canadian Pacific Rly. v. Gaud* [1949] 2 K.B. 239, 255.

CIVIL SUIT.

C. L. Duff for the plaintiffs.

L. A. J. Smith for the defendants.

Cur. Adv. Vult.

Rose C.J.: This is an unfortunate litigation, of which the facts are to a great extent common ground. The plaintiff company until very recently operated a fleet of ships largely in Indonesian waters. The defendants are petty officers in their employ. It appears that as a result of political events in Indonesia, which of course were beyond the control of the plaintiff company, it became impossible, practically speaking, for the company to continue their operations so far as Indonesia was concerned. An organisation entitled P.P.K.P.M. was set up by the Government of Indonesia to operate the affairs and control the assets of the company in Djakarta and elsewhere in the Indonesian Republic. This operation and control was effected without consultation with the plaintiff company.

By the middle of 1958 the company apparently decided that it was useless to endeavour to continue their operations in Indonesia and consequently their Dutch employees in Djakarta and their fleet sailed to Singapore. Having lost their Indonesian trade, only a small part of the company's fleet of approximately one hundred vessels is now profitably employed, the remainder lying inactive in Singapore harbour. One of the defendants' witnesses described the ships as "lying dead," which seems to be as good a description as any.

In addition to having a number of unemployed ships lying idle in Singapore the company found on their hands a number of Indonesian employees for whom no profitable work could be found. Amongst this number were the defendants in the present case, which I am informed, is regarded by the parties as a test case. By the middle of June 1958 the company had evidently decided to repatriate their Indonesian personnel, including the defendants. They found themselves however confronted with the position that by clause 5 of the seaman's agreement, which they had entered into with all the defendants, three months' wages in lieu of notice was required in the event of termination of the defendants' services on the ground that some of the company's ships were being taken out of service.

The company may well have thought — and from the layman's point of view their attitude may perhaps be regarded as not unreasonable — that as their present troubles were due to the action of the authorities in Indonesia, the responsibility for looking after the company's Indonesian employees should devolve upon those same authorities. Be that as it may, the company issued a notice of transfer to Djakarta to each of the defendants. The notice dated the 4th of June, 1958 — I quote from that one issued to the 1st defendant Wuisan — states:—

"*NOTICE OF TRANSFER TO DJAKARTA*

This is to inform you that you will be transferred to P.P.K.P.M. at Djakarta. You will be shifting to the said place by the ship M.S. "Junan" on the 8th June, 1958, which leaves from Singapore to Djakarta.

We hope that you will go to the Passage Dept. as soon as possible to make your necessary arrangements.

We wish you goodbye.

N.V. KONINKLIJKE PAKETVAART-MAATSCHAPPIJ

Sd: in Dutch.

To:

Ann de Weledele Heer E.J. Wuisan,
Stuurman Locaal Vaart 2e klas
aaan boord van het m.s. "Barito"."

Similar letters, it is not in dispute, were delivered to each of the other defendants.

The defendants not unnaturally inquired as to what steps were to be taken in regard to the sums due and about to become due to them. The reply given to them — and this is not disputed by the company — was to the effect that any monies due to them would be paid in Djakarta by the P.P.K.P.M.

The position of the defendants is that they were perturbed at what they regarded as a fundamental change in their prospects and conditions of service and consequently declined to accept transportation and repatriation to Indonesia until what they regarded as their just claims were met by the plaintiff company themselves. As they did not receive satisfaction in this matter, they elected to remain upon the ship on which at that time they were quartered.

The plaintiff company chose to regard the refusal to accept transfer as an act of disobedience to a lawful order and in pursuance of that view delivered to each of the defendants a notice of dismissal dated 16th of June, 1958. The relevant part of this notice reads as follows:—

"YOUR DISMISSAL

With reference to our letter dated 10th June, 1958 and the letter of 13th June, 1958, we herewith inform you that you have been dismissed from our service as from 14th June on account of an urgent reason given by you, as you refused to be transferred to our organisation in Indonesia."

In passing, I would observe that it is conceded that the dismissal can only be held to operate with effect from the 16th June and not the 14th of June as stated in the notice.

The first question to be determined is whether the defendants were justified in refusing to obey the order of transfer on the ground that it was an unlawful order. The defendants' position is that, having regard to the political situation in Indonesia both as it was in fact and as it was reported to be in the Singapore Press and otherwise (i.e. on the Radio and in the street), the whole basis of their engagement had been changed. There is of course ample authority for the proposition that an employee is entitled to refuse an order from his employer which would give rise to such a result.

The plaintiff company, on the other hand, contend that a seaman must, in the ordinary course of his service, contemplate the possibility of transfer from one branch or port to another; and that in this particular case the company

had a branch in Djakarta, although it was being operated and controlled by the P.P.K.P.M.

To my mind there is no doubt that the plaintiff company had no effective authority or power *vis-a-vis* the P.P.K.P.M. and had in practice, to accept decisions made and administrative action taken by the P.P.K.P.M. whether or not they appeared to be for the benefit of the plaintiff company. It seems to me that the defendants were entitled to infer, from the sources of knowledge available to them, that they were being invited to return to Indonesia where unstable conditions existed and where there was no reasonable prospect of the company's obligations being met, vicariously or otherwise.

It is true, surprisingly enough, that there was evidence to the effect that in certain cases the P.P.K.P.M. had retained Indonesian employees of the company and had paid them full wages, pending re-employment in some other concern, in addition to maintaining them in a hostel. Even assuming the correctness of that evidence, it is not suggested on behalf of the company that any explanation of or information in regard to this somewhat surprising development was ever given by or on behalf of the company to any of the defendants. In the absence of any such assurance or explanation, I do not consider that it can be held against the defendants that they failed to envisage so unlikely a possibility. As I have already stated the defendants, in my opinion, having regard to the sources of knowledge at their disposal at the relevant time, were entitled to take the view that obedience to the order of transfer to Djakarta would have resulted in a basic change for the worse in their employment. Moreover, I am of opinion that the actual state of affairs — irrespective of the detailed knowledge of the defendants themselves — justified the refusal of the order on the ground stated.

That being so, I hold that the defendants were justified in disobeying the order of transfer.

The question now arises as to the remedies. The matter is not without difficulty, but it seems to me that the principle is correctly stated by Singleton L.J. in *Canadian Pacific Railway v. Gaud* [1] where, after considering the rights of an employee who holds over in a dwelling house after the termination of the contract of service which entitled him to occupy it, he says:

> "The principle is the same in the case of seamen, and so far as I can see, no provision in the Canadian Shipping Act has altered this. The relationship between shipowner and seaman is determined by the articles, and if the shipowners have wrongfully dismissed or discharged members of the crew, they are liable in damages to them. Section 286 of the Canadian Shipping Act provides for maintenance and repatriation of a seaman 'where his service terminates at a port out of Canada otherwise than by his consent'."

Although Singleton L.J. was referring to a case in which the relevant shipping act was the Canadian one, his observations would clearly be applicable to a case in which any other similar provisions were relevant. Accepting Singleton L.J.'s argument, it follows that there is no difference in principle between a seaman's contract and any other contract between a master and servant, except that in the case of a seaman there is a rule, whether imposed by Statute or by Common Law or by Custom, that he may not be discharged in a foreign port unless he is provided with maintenance and accorded suitable repatriation facilities. This rule would seem to be founded upon common sense and indeed common humanity, and I hasten to add that the plaintiff company themselves have never contended to the contrary.

It would appear that a seaman whose contract has been unlawfully determined is limited to recovery of damages in respect of that unlawful determination, with the addition of any arrears of wages to which he was already entitled at the time of the determination of his service.

In the present matter several of the defendants are entitled to arrears of wages, although the amount involved is small as the period covered (except in the case of the first defendant) is only a few days. It is contended on their behalf that they have a lien on the ship in respect of the arrears of wages due to them. I am prepared to concede that that is so as regards the defendants to whom wages (as distinct from damages) are due. But I have now to consider the more difficult question as to the action that they were entitled to take in order to enforce their claims.

The step that the defendants in fact took was to remain in the ship, where notionally they still are today, although actually by agreement between the parties they have been transferred from the ship in question to another of the company's ships lying in Singapore harbour. I have not been referred to — and I have myself been unable to discover — any decided case in which seamen have been held to be justified in so acting. Moreover, there would seem to be sound reasons of commercial conveniences against the recognition of any such action. While therefore I refrain from defining the precise nature of the rights that are conferred

on a seaman by his maritime lien, I do not consider that they include the right to "stay over" in the ship itself.

That being so, I have now to consider to what relief the respective parties are entitled. I am informed from the Bar — and the evidence supports — that the plaintiff company has always been ready to supply suitable transport for all of the defendants to Indonesia and to continue their maintenance until their arrival at an Indonesian port. The defendants on their part, I understand, are willing to accept repatriation under suitable conditions as soon as their just dues are met.

Many authorities were cited to me in the course of the argument but, as counsel themselves have intimated, one safe principle to be extracted from them is that in matters of Admiralty a very wide discretion is vested in the Court to make such orders as would seem to be just in the light of the particular facts.

As regards the defendants, I consider that their just dues are limited to damages for the wrongful determination of their service in addition to any arrears of wages due up to the 16th of June, 1958. Clause 5 of the seaman's agreement in this case contemplates three months' wages as being appropriate on the set of facts which I have found to have arisen in this case (i.e. a number of ships being taken out of service) and I therefore consider that three months' wages for each of the defendants is an appropriate estimate of the damages.

The defendants also claim that the food supplied by the plaintiff company during their stay in Singapore harbour was not of good quality. No suggestion was made that the food was detrimental to health but that the seamen were accustomed to Indonesian food and did not appreciate Dutch food. There is no evidence that their health has in any way suffered from their diet or that the diet (looked at from the point of view of a Dutch diet) was in any way insufficient. I do not therefore regard this part of the claim as established.

It was also suggested that in the case of some of the defendants a period of leave had been earned which would automatically be lost by the termination of their contract. That claim was not pressed before me and I do not regard it as sustainable.

It follows from the view that I have taken as to the legality of the defendants' action in remaining in the ship that they were technically trespassers after the date of the termination of their services, namely the 16th of June, 1958. For that trespass the plaintiff company are entitled to damages. In assessing those damages, however, one must take into consideration the fact that at the present time the great majority of the ships of the plaintiff company are not gainfully employed and could not have been so employed during the period of the defendants' occupancy. There is, further, no suggestion that the particular ship upon which the defendants elected to remain could have been gainfully employed during the relevant period. Moreover, in so far as it may be relevant, the defendants' occupancy can hardly be held to have been merely mischievous or vexatious, in the light of evidence from an Immigration official that it would have been impossible for them (provided they wished to remain in Singapore) to have obtained accommodation elsewhere than in a ship in the harbour.

Having regard to these matters, I hold that the plaintiff company's loss is largely nominal and can appropriately be met by an award of $5 damages against each of the remaining defendants.

It is convenient at this stage to refer to the fact that in the case of the following defendants:—

7th defendant, Melkianus Piris; 17th defendant, Johan Ferdinandus; 19th defendant, Ferdinand Sahartian; 20th defendant, August Abalain; 23rd defendant, Albert Pasla; 27th defendant, Frits Taccazily; 28th defendant, Baharuddin Pardede; 29th defendant, Thomas Tanallma

a settlement has been arrived at pending the determination of this action. Therefore I am treating them, by consent of counsel, as having withdrawn from the case.

The case of the 30th defendant, who was unrepresented, depends upon a distinct set of facts. By consent of learned counsel, I ordered that the 30th defendant should be withdrawn from the case without prejudice to the institution of any fresh proceedings.

The remaining defendants, that is to say:—

1st defendant, Edward Johan Wuisan; 2nd defendant, Juel Pangemanan; 3rd defendant, Johny Jan Titarsole; 4th defendant, Makakombo; 5th defendant, Isuk Polii; 6th defendant, Samuel Albert Taulena; 8th defendant, Robert Christian Pongoh; 9th defendant, Rudi Andrie Frederick Tendean; 10th defendant, Hendrik Nino Nanlohi; 11th defendant, Jules Kaligis; 12th defendant, Andries Tellah; 13th defendant, Leonard Willem Mailoor; 14th defendant, Martin Luther Tanka; 15th defendant, Jan Kaloh; 16th defendant, Richard Nicolas; 18th defendant, Julius Schaduw; 21st defendant, Peiter Johan Frederick Sahetapy; 22nd defendant, Lodineigh de Ruyter; 24th defendant, Herman Lumi;

25th defendant, Effendi Tatuho; 26th defendant, Eddy Ernst Loway

are entitled to three months' wages as damages for the wrongful determination of their contract, the amount in each case (their salaries not being in dispute) to be determined by the Registrar.

As regards the 9th defendant, who was paid his wages up to the 30th of June 1958, the amount of damages must be reduced by the equivalent of 14 days' wages, the actual figure (as his salary is not in dispute) to be determined by the Registrar.

In addition, the following defendants are entitled to wages due to them up to the 16th June, 1958:—

4th defendant, 3 days' wages; 6th defendant, 2 days' wages; 8th defendant, 3 days' wages; 10th defendant, 3 days' wages; 11th defendant, 3 days' wages; 14th defendant, 2 days' wages; 15th defendant, 3 days' wages; 18th defendant, 3 days' wages; 21st defendant, 3 days' wages; 22nd defendant, 5 days' wages; 24th defendant, 2 days' wages; 25th defendant, 3 days' wages; 26th defendant, 2 days' wages

the amount in each case (the basis of assessment not being in dispute) to be determined by the Registrar.

There is evidence that the first defendant, Edward Johan Wuisan, was owed arrears of wages up to the 16th of June 1958 amounting to Indonesian Rupiahs 1,302.25. He must receive judgment for that amount, but there is no evidence before me as to the rate of exchange at the relevant times. The actual amount in Singapore currency must be determined by the Registrar after consultation, if necessary, with learned counsel in the case.

Until these arrears of wages are paid the defendants in question are entitled to a lien on the motor vessel "Ophir" and to the appropriate declaration.

It remains to consider the question of an injunction. Having regard to the attitude of the respective parties, to which I have already referred, I consider that an injunction is unnecessary at this stage and should not yet be granted. The fair order, in my view, is that the plaintiffs should have liberty to apply for an injunction restraining the defendants or any of them from remaining in the ship in question, or in any other of the plaintiff company's ships in Singapore, in the event of a refusal on the part of the defendants or any of them of a reasonable offer of repatriation to Indonesia under suitable conditions. Provided, of course, that the plaintiff company — as I have no doubt they will — will have continued to maintain the defendants pending the completion of the necessary transport arrangements.

On this matter of repatriation, I was asked by counsel for the defendants to order that each defendant should be repatriated to the particular port at which he signed on with the plaintiff company. In all the circumstances I do not regard this as a reasonable condition to impose upon the plaintiff company and I consider that justice will be done if the defendants are offered repatriation to Djakarta or any other Indonesian port which may be agreed between the parties.

There remains the question of costs. Having regard to all the facts of the case and in particular to the circumstance that the defendants were, in my view, justified in regarding the order of transfer to Djakarta as an unlawful order, I consider that the fair order is that there should be no order as to costs.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Marshall & Smith.*

NEDERLANDSCHE HANDEL-MAATSCHAPPIJ N.V. (NETHERLANDS TRADING SOCIETY) v. KOH KIM GUAN

[O.C.J. (Rose C.J.) April 20, 1959]

[Singapore — Suit No. 815 of 1958]

Practice — Standard of proof — Civil action involving allegation of fraud — High standard. Necessity for 'external' evidence to corroborate 'internal' evidence, value of internal evidence.

It has long been the practice in countries where the English system of law operates for the Courts, in civil cases, to require a high standard of proof in cases where fraud is alleged.

Shortly before the plaintiff bank's closing time on Saturday, June 21, 1958, the defendant presented for payment a cash cheque for $3,000, drawn by a third party. The plaintiffs allege that by an act of inadvertence on the part of their cashier a sum of $30,000 was in fact paid instead of $3,000 as was written on the cheque. The defendant denies that he received more than $3,000. Evidence were given by their staff as to procedure and practice of the plaintiff bank and the transaction concerning the cheque in question. The Court considered that the plaintiffs could do more than adducing internal evidence of their employees in order to put the matter beyond mere suspicion or conjecture, and suggested: "It would, for example, be highly relevant in a case of this nature if the plaintiffs were able to establish some change for the better in the circumstances of the defendant, that he had, for instance, incurred unusual expenditure or had unexpectedly settled outstanding obligations. It may be that such evidence is difficult to obtain but where a defendant of good character is